



# CVCWA

## Central Valley Clean Water Association

*Representing Over Sixty Wastewater Agencies*

**STEVE HOGG – CHAIR, FRESNO**  
**JEFF WILLETT – SECRETARY, STOCKTON**

**MICHAEL RIDDELL – VICE CHAIR, CERES**  
**ED CROUSE – TREASURER, RANCHO MURIETA CSD**

January 4, 2009

*Via U.S. Mail and Electronic Mail*

Greg Cash  
Regional Water Quality Control Board,  
Central Valley Region  
415 Knollcrest Drive, Suite 100  
Redding, CA 96002  
[gdcash@waterboards.ca.gov](mailto:gdcash@waterboards.ca.gov).

**RE: The Central Valley Clean Water Association's Comments on the Tentative Order for the City of Chico, Chico Water Pollution Control Plant**

Dear Mr. Cash:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to comment on the tentative waste discharge requirements for the City of Chico (City), Chico Water Pollution Control Plant (Tentative Order). CVCWA is a non-profit organization of approximately 60 agencies that own and operate wastewater treatment facilities throughout the Central Valley. CVCWA represents its members in regulatory matters that affect surface water discharge and land application with a perspective to balance environmental and economic interests consistent with applicable law. Accordingly, CVCWA has a keen interest in permit provisions adopted by the Central Valley Regional Water Quality Control Board (Regional Water Board). CVCWA respectfully requests that you revise the Tentative Order to remove Discharge Prohibitions E, F and G and include Chronic Whole Effluent Toxicity provisions consistent with other permits issued by the Regional Water Board.

- A. Discharge Prohibitions E, F and G Are Superfluous and Otherwise Inappropriate and Should be Removed

The Tentative Order contains the following discharge prohibitions:

- E. The discharge of waste that causes violation of any narrative water quality objective contained in the Basin Plan is prohibited.

- F. The discharge of waste that causes violation of any numeric water quality objective contained in the Basin Plan is prohibited.
- G. Where any numeric or narrative water quality objective contained in the Basin Plan is already being violated, the discharge of waste that causes further degradation or pollution is prohibited. (Tentative Order at p. 10.)

These blanket discharge prohibitions are inappropriate and should be removed from the Tentative Order for four major reasons. First, not all of the water quality objectives in the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins* (Basin Plan) apply to discharges to the Sacramento River and M&T Irrigation Canal. As stated on page III-1.00 of the Basin Plan: "Objectives may apply region-wide or be specific to individual water bodies or parts of water bodies."

Second, the discharge prohibitions are superfluous and circumvent the process required by federal and state law to determine whether a discharge has reasonable potential to cause or contribute to an exceedance of a numeric or narrative water quality objective. (See 33 U.S.C. § 1312(a); 40 C.F.R. § 122.44(d); Wat. Code, § 13377.) To determine whether a discharge has reasonable potential, the Regional Water Board must use procedures that account for various factors (e.g., existing controls on point and nonpoint sources; assimilative capacity). (40 C.F.R. § 122.44(d)(1)(ii).) A permit must include water quality-based effluent limitations (WQBELs) for any constituent for which reasonable potential exists.<sup>1</sup> (40 C.F.R. § 122.44(d)(1)(i).) The Tentative Order explains the reasonable potential analysis conducted for the City's discharge and prescribes WQBELs based on the analysis. (Basin Plan at pp. F-12 to F-31, G-1, H-1.) Accordingly, the WQBELs protect water quality as required by law and render Discharge Prohibitions E, F and G unnecessary.

Similarly, Discharge Prohibition G is superfluous and circumvents the process required by federal and state law to address impaired waters and develop a total maximum daily load (TMDL). (See 33 U.S.C. § 1313(d); Wat. Code, §13377.) The purpose of the TMDL process is to ensure that point and nonpoint sources do not further degrade impaired water quality and the subject water body comes into compliance with its water quality objectives. (See 33 U.S.C. § 1313(1)(C).) The TMDL process generally requires three steps: (1) identify any waters that are and will continue not to meet their water quality objectives after the application of technology standards; (2) prioritize these waters accounting for the severity of the impairment; and (3) establish TMDLs for these waters at levels necessary to meet the water quality objectives accounting for seasonal variations and with a margin of safety to reflect lack of certainty about discharges and water quality. (33 U.S.C. § 1313(d).) Therefore, the TMDL process that results in appropriate effluent limitations for wastewater treatment plants is the appropriate means by which to accomplish the goal of Discharge Prohibition G.

---

<sup>1</sup> Under the federal regulations, where "a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant." (40 C.F.R. § 122.44(d)(1)(iii).)

Finally, the discharge prohibitions may subject the City to potential liability under the citizen suit provision of the Clean Water Act (33 U.S.C. § 1365). For example, the Regional Water Board may amend its Basin Plan to add or modify a water quality objective that applies to the City's discharge and implicates Discharge Prohibition E, F and/or G. Unless and until the Regional Water Board reopens or reissues the City's permit to modify it to comply with the updated water quality objective(s), the City may be subject to citizen enforcement for violating one or more of the discharge prohibitions.

For these reasons, CVCWA respectfully requests that Discharge Prohibitions E, F and G be removed from the Tentative Order.

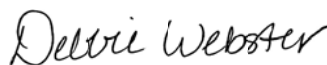
B. The Chronic Whole Effluent Toxicity Provisions Should be Revised Consistent With Such Provisions in Other Permits Issued by the Regional Water Board

Similar to other National Pollutant Discharge System (NPDES) permits issued by the Regional Water Board, the Tentative Order includes provisions to address chronic whole effluent toxicity. However, the provisions in the Tentative Order are inconsistent with those in other such NPDES permits and should be revised accordingly. (See Tentative Order at pp. 20-21; see e.g., Order No. R5-2009-0095, NPDES No. CA0081558 at pp. 26-27; Order No. R5-2007-0132-01, NPDES No. CA0079049 at pp. 26-28.) Specifically, the Tentative Order states that if the City's discharge exhibits a pattern of toxicity that exceeds the numeric toxicity monitoring trigger during the accelerated monitoring established in the provision, the City must initiate a toxicity reduction evaluation (TRE). (Tentative Order at p. 20.) However, the Tentative Order does not specify a numeric toxicity monitoring trigger or contain the other two typical provisions for accelerated monitoring—i.e., Accelerated Monitoring and TRE Initiation and Accelerated Monitoring Specifications. (*Id.* at pp. 20-21.)

CVCWA respectfully requests that the Tentative Order be revised to specify an appropriate numeric toxicity monitoring trigger and include the Accelerated Monitoring and TRE Initiation and Accelerated Monitoring Specifications provisions. The revision requested would make the Tentative Order consistent with the Regional Water Board's current NPDES permitting practice.

Thank you for considering CVCWA's request that Discharge Prohibitions E, F and G and Chronic Whole Effluent Toxicity provisions be revised as described in this letter. Please contact me at (530) 268-1338 if you have any questions.

Sincerely,



Debbie Webster  
Executive Officer